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In re Application of:
Robert W. Spurr et al.
Serial No.: 10/651,682
Filed: August 29, 2003
Attorney Docket No.: 78253BRRS

DECISION
ACCEPTING PAPERS

Serial No. 10/651,682 is a continuation of Serial No. 09/767,624. This is a decision accepting the response filed on March 14, 2005 for parent file Serial No. 09/767,624 as being timely filed for Serial No. 10/651,682.

A non-final Office action for Serial No. 10/651,682 was mailed to the applicant on August 17, 2004. The action set a 3 month shortened statutory period in which to respond. The response (an amendment; a petition for a 2 month extension; and an information disclosure statement) filed on March 14, 2005 includes a copy of a receipt bearing a PTO stamp indicating a January 24, 2005 date of receipt. The receipt lists an "Amendment; 2 mo. Extension of Time; and Copy of Disclosure Statement-Supplemental" as being received at the PTO on January 24, 2005 for parent file Serial No. 09/767,624.

The copies of the amendment, extension of time and information disclosure statement filed on March 14, 2005 each include a Certificate of Mailing dated January 17, 2005 so if the original response was received on January 24, 2005 and if it was for Serial No. 10/651,682, it would have been a timely response to the Office action of August 17, 2004 under the provisions of 37 C.F.R. § 1.8(a) and 37 C.F.R. § 1.136(a).

Although each of the copies include the parent file's information (i.e., Serial No., filing date, etc.), the copy of the amendment states that it is in response to the Office action mailed August 17, 2004 so the correct identification of the response could have been quickly discovered, especially considering the parent file issued as a patent on October 21, 2003. Thus, if the original response was timely filed it could have been accepted for Serial No. 10/651,682 under the provisions of MPEP § 502.

The original response is not in the file record and cannot be located. However, M.P.E.P.

§ 503 states that “a postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO.” Accordingly, it is concluded that the original response was timely filed but was lost or misplaced after receipt thereof.

The response of March 14, 2005 is hereby accepted as being timely filed and accepted for entry in the file record of Serial No. 10/651,682. The examiner will prepare an Office action based upon the response.

Any inquiries regarding this decision should be directed to Edward Westin at (571) 272-1638.



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